1086. After an executed conveyance of a fee without covenants, no action ordinarily lies against the vendor if it transpires that he had no title. *Earle* v. *De Witt*, 6 All. (Mass.) 520; *Thorkildsen* v. *Carpenter*, 120 Mich. 419, 79 N. W. 636. But if the agreement is still executory the purchaser cannot be forced to take the vendor's defective title. *Vought* v. *Williams*, 120 N. Y. 253, 24 N. E. 195; *Smith* v. *Hunter*, 241 Ill. 514, 89 N. E. 686. And he may bring an action against the vendor for damages for breach of contract. *Vaughn* v. *Butterfield*, 85 Ark. 289, 107 S. W. 993; *Fleckten* v. *Spicer*, 63 Minn. 454, 65 N. W. 926. In the case of a contract to sell a lease the assignee will be injured if either the assignor's or the lessor's title is defective. Accordingly it has been held that the prospective assignee need not accept an assignment if the lessor's title is bad. *Purvis* v. *Rayer*, 9 Price, 488; *Souter* v. *Drake*, 5 B. & Ad. 992. And it follows as before that a right to damages against the assignor should be allowed. The court in the principal case admits that the transaction here is only an executory agreement. But it then decides the case as if the sale were executed, with the result that the ground of its decision, that no covenants will be implied in an assignment, has no application to the facts.

LANDLORD AND TENANT — CONDITIONS AND COVENANTS IN LEASES — EFFECT OF RESTRICTION AGAINST ASSIGNMENT ON COMPULSORY LIQUIDATOR. — The liquidator in the compulsory winding up of a corporation sought a declaration that he might assign a lease which contained a covenant against assignment without the lessor's consent. From an order granting this relief, the lessor appealed. *Held*, that the appeal be allowed. *In re Farrow's Bank, Ltd.*, [1921] 2 Ch. 164 (C. A.).

Although such restrictions as the covenant in the principal case imposes are valid, a change of tenant is not regarded as a breach in several instances. If the change is by operation of law it is valid; as when the personal representative of a deceased succeeds to the term. *Charles* v. *Byrd*, 29 S. C. 544, 8 S. E. 1. See 1 WILLIAMS, EXECUTORS, 11 ed., 702. An execution sale, also, is held not to violate the covenant, as the transfer is by the sheriff, not by the lessee. *Doe* v. *Carter*, 8 T. R. 57; *Farnum* v. *Hefner*, 79 Cal. 575, 21 Pac. 955. And it is held that a trustee in bankruptcy may assign. *Gazlay* v. *Williams*, 210 U. S. 41. *Cf. Doe* v. *Clarke*, 8 East, 185; *In re Georgalas Bros.*, 245 Fed. 129 (N. D. Ohio). The reasons given are that, not being an assignee, the trustee is not bound by the covenant; or that such a transfer is necessary to protect the rights of the creditors. See *Doe* v. *Bevan*, 3 M. & S. 353, 360; *Gazlay* v. *Williams*, *supra*, at 47. These reasons seem inconclusive; and as the assignment by the trustee really violates the intent of the parties, the bankruptcy cases seem wrong. Their doctrine should certainly not be extended. Under the statute in the principal case the liquidator does not get title and the court distinguishes the bankruptcy cases on this ground. The distinction, though fine, is a justifiable means of avoiding an extension of the doctrine. Where the liquidator does get title, the bankruptcy cases are followed. *Liquidation of Citizens Savings & Trust Co.*, 171 Wis. 601, 177 N.W. 905.

LANDLORD AND TENANT — CONDITIONS AND COVENANTS IN LEASES — "RENEWAL" CONSTRUED TO MEAN EXTENSION. — The plaintiff leased to the defendant for five years, with an option to "renew" for two further periods of five years each at specified rents. Notice of the election to exercise the option was not expressly required. The defendant remained on the premises for nearly nine years without ever having given such notice, always paying the stipulated rent. The plaintiff then gave notice to vacate, and on the defendant's refusal to do so instituted forcible detainer proceedings. These proceedings were dismissed. *Held*, that the judgment be affirmed. *Klein* v. *Auto Delivery Co.*, 234 S. W. 213 (Ky.).

The only substantial difference between renewals and extensions is in the method of their initiation. The former require the execution of a new lease. *Thiebaud* v. *First National Bank*, 42 Ind. 212. See 2 UNDERHILL, LANDLORD AND TENANT, § 803. Merely holding over will effect an extension. *Callahan Co.* v. *Michael*, 45 Ind. App. 215, 90 N. E. 642. See *Andrews* v. *Marshall Co.*, 118 Iowa, 595, 597, 92 N. W. 706, 707. In the absence of express stipulation for a new lease, the court must construe the old lease to determine which of these situations the parties had in mind. *Orton* v. *Noonan*, 27 Wis. 272. "Renew" and "extend" are used interchangeably by many business men; it is not, therefore, obligatory to give them their technical meaning. *Insurance Bldg. Co.* v. *National Bank*, 71 Mo. 58. *Cf. Harding* v. *Seeley*, 148 Pa. St. 20, 23 Atl. 1118. Courts are undoubtedly influenced by the fact that the execution of a new lease is expensive, and the only purpose that it can serve is to give notice that the option is to be exercised. Since this purpose can be accomplished by providing in the lease for such notice, there is a tendency to hold that an extension was intended, unless a contrary intent clearly appears. The mere use of the word "renew" is not enough. See UNDERHILL, *supra*.

LITERARY PROPERTY — RIGHTS OF ASSIGNEE — INFRINGEMENT OF COMMON-LAW RIGHT TO THE FIRST PUBLICATION. — The composer of a song sold all his rights therein to the plaintiff. He thereafter copyrighted the song, sold copies in conjunction with another defendant, and licensed other defendants to reproduce the song upon phonograph records. The plaintiff sues to enjoin all the defendants, and for an accounting. The defendants demur on the ground that the complaint does not state a cause of action. *Held*, that the demurrers be overruled. *Kortlander* v. *Bradford* 190 N. Y. Supp. 311 (Sup. Ct.).

For a discussion of the principles involved, see NOTES, *supra*, p. 599.

PARTNERSHIP — DUTIES OF PARTNERS *INTER SE* — SECRET AGREEMENT FOR FUTURE PARTNERSHIP WITH LESSOR OF FIRM PREMISES. — A bill in equity alleged that the plaintiffs and the defendant as partners had operated a profitable billiard parlor on leased premises; that shortly before the expiration of the lease, there being no option to renew, the defendant secretly persuaded the lessor not to renew to the firm, but to agree to run the business in partnership with the defendant; and that the plaintiffs were induced by the defendant to dissolve the partnership and sell the business and effects to the lessor at less than their worth, with no allowance for good will. The plaintiffs prayed an accounting and a declaration that they were entitled to their share of the defendant's subsequent profits. A demurrer was sustained below. *Held*, that the decision be affirmed. *Stewart* v. *Ulrich*, 201 Pac. 16 (Wash.).

In dealing with each other, partners must act in the utmost good faith. See *Blisset* v. *Daniel*, 10 Ha. 493, 522, 536; *Holmes* v. *Darling*, 213 Mass. 303, 305, 100 N. E. 611, 612; *Hollowell* v. *Satterfield*, 185 Ky. 397, 400, 401, 215 S. W. 63, 65; LINDLEY, PARTNERSHIP, 8 ed., 364; BURDICK, PARTNERSHIP, 3 ed., 320. If during the continuance of the firm the defendant had secretly secured for himself a renewal of the firm lease, he would hold it in constructive trust for the firm, even though it was to begin after the firm's dissolution. *Featherstonhaugh* v. *Fenwick*, 17 Ves. 298; *Mitchell* v. *Reed*, 61 N. Y. 123. *Cf. Struthers* v. *Pearce*, 51 N. Y. 357; *Knapp* v. *Reed*, 88 Neb. 754, 130 N. W. 430. It makes no difference that the lessor would not have renewed to the firm or to the other partners. See *Featherstonhaugh* v. *Fenwick*, *supra*, at 301, 312; *Mitchell* v. *Reed*, *supra*, at 139. Instead of a renewal, the defendant secured an interest in the premises equivalent in substance to a renewal, by virtue of the lessor's agreement to form a partnership. Even if, as the court says, this case does not fall exactly within the category of the renewal cases, it is still true that the